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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

STANMOORE U. PALAVI,

Defendant and Appellant.

_____/

H027364

(Santa Clara County Superior Court No. CC258772)

On appeal defendant Stanmoore U. Palavi claims the trial court erred by failing to advise him of his *Boykin-Tahl*[1] rights prior to his admitting his prior "strike" conviction and that, as a result, his admission to having suffered a prior strike conviction "should be reversed."

I. Statement of Facts and Case

The substantive charges in this case stem from an incident on July 20, 2002, during which defendant entered a Milpitas check cashing store and presented a forged check in the amount of $687.18. While the store clerk was attempting to determine

[1] *Boykin v. Alabama* (1969) 395 U.S. 238; *In re Tahl* (1969) 1 Cal.3d 122.

whether the check was valid or forged, defendant left the store, leaving his driver's license behind.

Defendant pleaded no contest to one count of second degree burglary (Pen. Code, § 459)[2] and admitted a prior strike conviction (§§ 667, subds. (b)-(i), 1170.12) as part of a negotiated disposition that included a stipulated sentence of 32 months in state prison and the dismissal of a forgery charge (§ 470, subd. (d)), an attempted grand theft charge (§ 664/487, subd. (a)), and a prison prior allegation (§ 667.5, subd. (b)). In accord with the negotiated disposition, defendant was sentenced to 32 months in state prison.

II. Discussion

Defendant contends his admission to having suffered a prior conviction for residential burglary within the meaning of the Three Strikes law must be set aside because "the record reflects that [he] was never advised, even in a summary fashion, of any of the constitutional rights he was giving up by his decision to admit the prior conviction in violation of the rules laid down by the Supreme Court in the *Yurko*[3] case."

A. Factual Summary of the Change of Plea Proceedings

At the beginning of the change of plea proceedings, the trial court commented that, although a jury panel was waiting to try defendant's case, "there has been a negotiated disposition of the case." When asked to state that negotiated disposition for the record, defense counsel stated that defendant was going to "plead no contest as charged, admitting all charges and *admitting the strike prior* as well as the prison prior, your Honor, for an agreed upon . . . 32 months top/bottom for his plea of no contest.

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[2] Subsequent statutory references are to the Penal Code unless otherwise specified.

[3] *In re Yurko* (1974) 10 Cal.3d 857.

[¶] And the maximum sentence is seven years, your Honor." (Italics added.) Defense counsel told the trial court that he had "explained to [defendant] his rights and the direct consequences of his change of plea," and defendant told the court he had had "enough time to discuss the case and all its ramifications with [his] attorney," "including the sentence."

The trial court then engaged in the following colloquy with defendant regarding his change of plea: "THE COURT: By pleading no contest, you will be waiving and giving up some of your constitutional rights. I want to explain them to you. [¶] You have the right to a public jury trial. Do you understand that right and give it up? [¶] THE DEFENDANT: Yes. [¶] THE COURT: If you waive your right to a jury trial, you have the right to a court trial; that's a trial by a judge without a jury. Do you understand that right and give it up? [¶] THE DEFENDANT: Yes. [¶] THE COURT: You have the right to see and hear and, through your attorney, question the witnesses against you. Do you understand that right and give it up? [¶] THE DEFENDANT: Yes. [¶] THE COURT: You have the right to remain silent, not to incriminate yourself. Do you understand that right and give it up? [¶] THE DEFENDANT: Yes. [¶] THE COURT: You have the right to present a defense, that is to testify in your own behalf, and to present evidence and witnesses and to use the court's subpoena power to bring evidence and witnesses before the court for your defense. Do you understand that right and give it up? [¶] THE DEFENDANT: Yes."

After ensuring that defendant had not been made any promises to plead no contest other than those discussed on the record, that no one had threatened defendant or caused him to plead no contest, and that defendant was not under the influence of alcohol, a drug, a narcotic, or medication, the court then asked defendant, "Are you pleading no contest freely and voluntarily?" To this question, defendant answered, "Yes."

When the trial court began to read the charges to defendant, defense counsel interrupted to explain that he had made a mistake during his recitation of the negotiated disposition. Counsel explained that the offer was to plead no contest to Count One and that, since "it now is going to be top/bottom," no motion to strike the prior "strike" conviction would be brought pursuant to *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497. Counsel added that there was an agreement that the prison prior allegation would be stricken.

After clarifying that the negotiated disposition was to plead to Count One and to "*admit the strike*" (italics added), the trial court took defendant's plea as follows: "THE COURT: . . . Let's go ahead and take the plea. [¶] You're charged in Count One of the information with a violation of Penal Code section 459-460(B), a felony commonly known as second degree burglary. To that charge, how do you plead? [¶] THE DEFENDANT: No contest. [¶] THE COURT: And it's also alleged in the information that you were previously convicted in Santa Clara County Case Number CC067463 of a violation of Penal Code section 459-460 (D), residential burglary, and that the offense falls within the meaning of the Three Strikes law. Do you admit that allegation is true? [¶] THE DEFENDANT: Yes. [¶] MR. McINERY [the prosecutor]: Judge, that should be a violation of Penal Code section 459-460 (A). [¶] THE COURT: In the previous conviction, Mr. Palavi was in violation of Penal Code section 459-460 (A); is that correct? [¶] THE DEFENDANT: Yes."

B. Legal Analysis

Defendant contends his admission to having suffered a prior strike conviction should be reversed because the trial court failed to "advise him of his constitutional rights under *Boykin*, *Tahl* and *Yurko with respect to the prior conviction*." (Italics added.)

"[B]efore a court accepts an accused's admission that he has suffered prior felony convictions," the court must provide "express and specific admonitions as to

the constitutional rights waived by an admission." (*In re Yurko*, *supra*, 10 Cal.3d at p. 863.) Those rights include the right to a jury trial, the right to confrontation, and the privilege against self-incrimination. (*Ibid*.; see also *Boykin v. Alabama*, *supra*, 395 U.S. 238; *In re Tahl*, *supra*, 1 Cal.3d 122.)

We consider defendant's claim of *Yurko* error pursuant to the standard set forth in *People v. Howard* (1992) 1 Cal.4th 1132: "[A] plea is valid if the record affirmatively shows that it is voluntary and intelligent under the totality of the circumstances. [Citations.]" (*Id*. at p. 1175.)

In this case, the trial court advised defendant of his *Boykin-Tahl* rights with regard to the substantive charges against him, but it did not specifically advise defendant of those same rights with regard to the prior strike conviction allegation. We therefore must consider whether the record affirmatively shows that defendant's admission to the strike prior was "voluntary and intelligent under the totality of the circumstances. [Citations.]" (*People v. Howard*, *supra*, 1 Cal.4th at p. 1175.)

Defendant relies upon *People v. Bell* (1981) 118 Cal.App.3d 781 (*Bell*), disapproved on other grounds in *In re Ibarra* (1983) 34 Cal.3d 277, 286. The defendant in *Bell* was charged with burglary, and it also was alleged that he had suffered a prior felony conviction. In admonishing the defendant regarding the constitutional rights he was waiving, the trial court first asked if the defendant understood "that if you do plead guilty to the charge *of burglary*, that you're giving up your right to have a trial?" (*Id*. at p. 783.) The court next told the defendant he was "giving up your privilege to cross-examine, your right to cross-examine the witnesses for the prosecution. You give up that right if you plead guilty." (*Ibid*.) The court then stated that, "by pleading guilty you are giving up your privilege against self-incrimination. You're convicting yourself *of this offense*, and you don't have do that if you don't wish to do it. It must be a free and voluntary decision on your part." (*Id*. at pp. 783-784.) The trial court then accepted the defendant's guilty plea and his

admission to the prior conviction allegation. On appeal, the court found that the trial court had erred by (1) failing to inform the defendant that he had a right to a jury trial and (2) failing to advise the defendant that the rights and privileges that were discussed also applied to the prior conviction allegation. (*Id*. at pp. 784-785.) The *Bell* court held that the admission of the prior conviction and the guilty plea to the burglary had to be "voided." (*Id*. at p. 785.)

In *People v. Forrest* (1990) 221 Cal.App.3d 675 (*Forrest*), the defendant claimed he had not been expressly advised as to the constitutional rights he was waiving when he admitted prior conviction allegations. Noting that the defendant had been informed of all his constitutional rights before the trial court had accepted his pleas and admissions, the appellate court interpreted the defendant's claim to be that "the magistrate must expressly and *separately* advise defendant of his right[s]" as to prior conviction allegations, even when defendant enters guilty pleas and prior conviction admissions in the same proceeding. (*Id*. at pp. 678-679.) Rejecting this claim, the *Forrest* court reasoned that "[t]here is nothing in *Yurko* or the cases cited by defendant which requires a separate advisement and waiver of rights where, as here, defendant in a single proceeding pleads guilty to a current charge and also admits that he suffered prior convictions." (*Id*. at p. 679, italics omitted.)

We are not persuaded by defendant's argument that his case is more similar to *Bell* than *Forrest*. Unlike *Bell*, where the trial court implicitly separated the substantive charge from the prior prison term allegations, the trial court in this case ensured that defendant realized he was pleading to a substantive charge and admitting the prior strike conviction allegation before proceeding with the required advisements. Before accepting defendant's plea, the trial court reiterated that the negotiated disposition included a change of plea to Count One and to the strike allegation. Furthermore, the record reveals that defendant anticipated having a bifurcated trial on his entire case with the prior to "be bifurcated *and tried* after the charged offense"

until the parties negotiated a disposition while the jury panel was waiting downstairs. (Italics added.)[4] Although the trial court did refer to "pleading no contest" when informing defendant of his right to a jury trial, the trial court did not separate out the substantive offense from the prior strike allegation when informing defendant of his additional constitutional rights and privileges. In addition, the trial court made clear to defendant that he faced a potential six-year prison term but instead would receive a stipulated 32-month sentence in exchange for his change of plea to the substantive charge and the prior strike conviction allegation. Defendant acknowledged that he understood the ramifications of his plea, including the sentence, which necessarily constituted the lower term for the burglary doubled due to the admission of the strike conviction allegation. In addition, the trial court advised defendant that "[i]f I were to disagree with the 32 months top/bottom at the time of sentencing, *you would be allowed to withdraw your plea and go to trial on all the charges currently pending against you*." (Italics added.)

We conclude the record supports the trial court's determination that defendant's admission and plea in this case were "voluntary and intelligent under the totality of the circumstances." (*People v. Howard*, *supra*, 1Cal.4th at p. 1175; see also *People v. Forrest*, *supra*, 221 Cal.App.3d at p. 681.)

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[4] None of the cases relied upon by defendant, apart from *Bell*, involve a situation where the trial court's single advisement could have related to both the substantive charges and the admission of a prior conviction. (See *People v. Campbell* (1999) 76 Cal.App.4th 305; *People v. Stills* (1994) 29 Cal.App.4th 1766; *People v. Johnson* (1993) 15 Cal.App.4th 169.)

III. Disposition

The judgment is affirmed.

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Mihara, J.

We concur:

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Bamattre-Manoukian, Acting P.J.

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McAdams, J.